UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK	
JOSEPH J. CARROLL,	
Plaintiff,	07 11577
-against-	07-cv-11577
CITY OF MOUNT VERNON,	AFFIDAVIT OF HOWARD M. MILLER
ERNEST D. DAVIS, Individually and as Mayor of the City of Mount Vernon	
CITY OF MOUNT VERNON DEPARTMENT OF FIRE,	
and	
NICHOLAS CICCHETTI, Individually and as Commissioner of Fire for the City of Mount Vernon	
Defendants.	
STATE OF NEW YORK ) ) ss:	
COUNTY OF NASSAU )	

HOWARD M. MILLER, being duly sworn deposes and says:

- 1. I am a member of Bond, Schoeneck & King, PLLC, counsel for Defendants, and submit this reply affidavit in support of Defendants' motion to dismiss the first amended complaint.
- 2. Annexed hereto as "Exhibit A" is a copy of the Report of Personnel Change and accompanying EEO/Affirmative Action Data regarding the promotion of Michael Brown to Fire Lieutenant on March 16, 2007.
- 3. Annexed hereto as "Exhibit B" is a copy of the Report of Personnel Change and accompanying EEO/Affirmative Action Data regarding the promotion of Joseph Dalo to Fire Lieutenant on December 14, 2007.

4. Annexed hereto as "Exhibit C" is a copy of the Report of Personnel Change and accompanying EEO/Affirmative Action Data regarding the promotion of Justin Chase to Fire Lieutenant on December 14, 2007.

5. The documents annexed as "Exhibit A," "Exhibit B," and "Exhibit C" are properly before this Court because they are public Civil Service records and the Court may take judicial notice of public records without converting a motion to dismiss into one for summary udgment. See Kramer v. Time Warner, Inc., 937 F.2d 767, 773 (2d Cir. 1991); Kempkes v. Downey, 2008 WL 852765, \*3 (S.D.N.Y. 2008); Evans v. New York Botanical Garden, 2002 WL 31002814 (S.D.N.Y. 2002).

Howard M. Miller

Sworn to before me this

day of August 2008.

Notary Public

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61321.1

#### CERTIFICATE OF SERVICE

I hereby certify that on August 15, 2008 the foregoing document was filed with the Clerk of the Court and served in accordance with the Federal Rules of Civil Procedure, and/or the Southern District's Local Rules, and/or the Southern District's Rules on Electronic Service upon the following parties and participants:

Andrew P. Fleming, Esq. CHIACCHIA & FLEMING, LLP 5113 South Park Avenue Hamburg, New York 14075

Howard M. Miller (HM4538)

Attorneys for Defendants

1399 Franklin Avenue, Suite 200

Garden City, New York 11530

(516) 267-6300

hmiller@bsk.com

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Exhibit A

	Sase 7.07-CV-11577-	Report all personnal cha		Page 5 01 1	
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) FH	OM: FIRE	TMENT	•	AUDRESS	# = 0 !
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	LT. BART KRAI	EMPLOYEE IN POSITION	Disabled Vaters	n	Volunteer Fireman
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<u> </u>	Deceased				* .
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	Leave of absence		From	To	
Ti -	Demotion				
TANGES	Suspension				
3	Reinstatement			,	
- I	Absent Without Pay				
E XX	Change in salary		3 1/		
,	Change in name		3-16-	2001)	
	Other				
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THILE IRE COMR. NICHOLAS CICCHETTI

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# EEO/AFFIRMATIVE ACTION DATA

عصيت	CHECK	APPLICABLE	CATEGORIES.
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,	MALE	FEMALE	
Black	White Hispan	ic <u>Asian</u>	Amer. India
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	2. Professionals	•	
	3. Technicians		· · · · · · · · · · · · · · · · · · ·
	4. Protective Service	ces .	
·	5. Para-Professional	•	
	_6. Office/Clerical	•	•
	_7. Skilled Craft	·	
	8. Service/Maintenan	<b>~</b> a	
	1	<u> </u>	
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2. Competitive - 311	positions for which it ness of the applicant b		determine
3. <u>Non-competitive</u>	- All positions that am the labor class and for Civil Service Commiss: practicable to ascerta applicants by examinat	e not in the exempt or which it is four ion of Mount Vernor	nd by the
_4. <u>Laborer</u> - Unskill			
5. Unclassified	•	•	

Exhibit B

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			Report all personnel chang- prior to payroll affected by	A 1112	വഷനുള	12	DATE
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		en e			TIPLE OF POSITION MALE	FEMALE	19,165.00 SALARY
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ION	-	Resignation - Letter	Attached				
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\ \frac{1}{2}	-	Deceased Removal					
TERMINATIONS		Terminated :					
片	1	Leave of absence					
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GES		Demotion		-			
CHANGES		Suspension					
CH		Reinstatement					
ER		Absent Without Pay					
<b>JTHER</b>	XY	Change in salary			Non-lan-111 3		
Ų		Change in name			December 14, 2	.00.1	
		Other					
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# EEO/AFFIRMATIVE ACTION DATA

PLEASE CHECK APPLICABLE CATEGORIES:

X MALE FEMALE
Black
EED-4 CATEGORY
l. Officials/Administrators
2. Professionals
3. Technicians
X 4. Protective Services
5. Para-Professionals
6. Office/Clerical
7. Skilled Craft
8. Service/Maintenance
TVIL SERVICE STATUS
1. Exempt - positions for which competitive or noncompetitive examinations are not practicable.
2. Competitive - All positions for which it is practicable to determine the merit and fitness of the applicant by examination.
3. Non-competitive - All positions that are not in the exempt class or the labor class and for which it is found by the Civil Service Commission of Mount Vermon not to be practicable to ascertain the merit and fitness of applicants by examination.
4. <u>Laborer</u> - Unskilled workers.
5. Unclassified

Exhibit C

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5. <u>Unclassified</u>

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## EEO/AFFIRMATIVE ACTION DATA

PLEASE CHECK APPLICABLE CATEGORIES: X MALE X\_White Black Hispanic Asian Amer. Indian EEO-4 CATEGORY \_\_l. Officials/Administrators 2. Professionals Technicians X 4. Protective Services 5. Para-Professionals 6. Office/Clerical 7. Skilled Craft 8. Service/Maintenance CT.TL SERVICE STATUS 1. Exempt - positions for which competitive or noncompetitive examinations 2. Competitive - All positions for which it is practicable to determine the merit and fitness of the applicant by examination. 3. Non-competitive - All positions that are not in the exempt class or the labor class and for which it is found by the Civil Service Commission of Mount Vernon not to be practicable to ascertain the merit and fitness of applicants by examination. 4. <u>Laborer</u> - Unskilled workers.